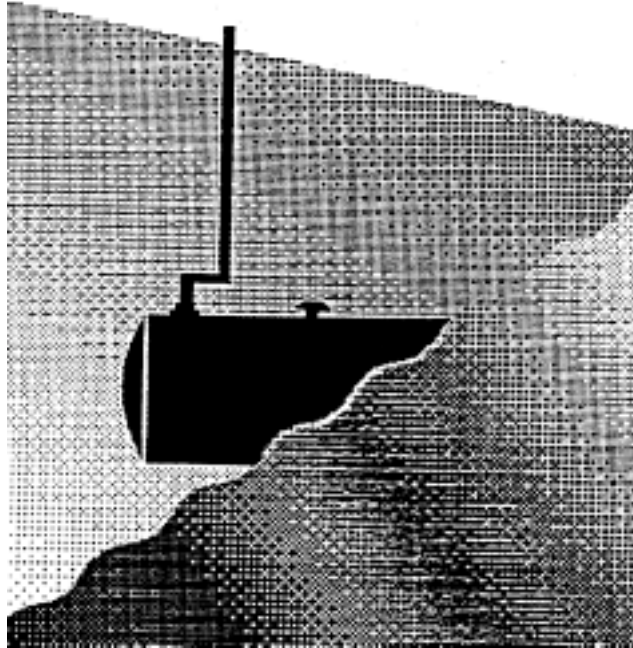


# **Michigan Dollars and Sense**

## **Financial Responsibility Requirements for Michigan Underground Storage Tanks**



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## Why are there financial responsibility requirements?

When Congress amended Subtitle I of the Resource Conservation and Recovery Act in 1986 it directed the US Environmental Protection Agency (**EPA**) to develop financial responsibility regulations for owners and operators of underground storage tanks (**USTs**) storing petroleum.

EPA estimates that there are about 1.2 million federally regulated petroleum USTs buried at over 500,000 sites nationwide. These sites are owned by marketers who sell gasoline to the public (such as service stations and convenience stores) and non-marketers who use USTs solely for their own needs (such as fleet service operators and local governments).

Many of these USTs have released or will release petroleum into the environment through spills, overfills, or failures in the tank and piping system. EPA estimates that the total number of confirmed releases could reach 400,000 in the next several years. After this peak, EPA expects fewer releases as owners of USTs comply with federal and state requirements for new USTs and upgrade older USTs with spill, overfill, and corrosion protection.

Cleaning up these leaks can be costly. Congress wanted owners and operators of USTs to demonstrate that they have the financial resources--through insurance or other means explained below--to pay for the costs of corrective action and third-party liability that can result from leaking USTs.

**The financial responsibility requirements are designed to make sure that someone can pay the costs of cleaning up leaks and compensating third parties for bodily injury and property damage caused by leaking USTs.**

*This booklet briefly describes financial responsibility requirements for underground storage tanks (USTs) storing petroleum.*

## **Why should your USTs meet these requirements?**

It is particularly important that someone be prepared to pay cleanup costs so that cleanup activities can begin as quickly as possible. Without fast action at contaminated sites, contamination can spread and increase significantly the chance of damaging the environment and human health.

Complying with the financial responsibility requirements also protects you, as an owner or operator of USTs. If your UST leaks, you may be faced with high cleanup costs or with lawsuits brought by third parties. You will be able to pay these costs if you have met the financial responsibility requirements.

Also, if you cannot demonstrate financial responsibility by the compliance deadline that applies to your UST facility, you can be cited for violation and fined.

## **Who needs to demonstrate financial responsibility?**

Either the owner or the operator of the UST must demonstrate financial responsibility, if the owner and operator are different individuals or firms. It is the responsibility of the owner and operator to decide which one will demonstrate financial responsibility.

Federal and state governments and their agencies that own USTs are not required to demonstrate financial responsibility. Local governments, however, must comply with the financial responsibility requirements.

## What kinds of USTs need to meet these requirements?

An underground storage tank system (UST) is a tank and any underground piping connected to the tank that has at least ten percent of its combined volume underground. The federal UST regulations for financial responsibility apply only to all underground tanks and piping storing petroleum.

The financial responsibility requirements apply to **all USTs holding petroleum**, with the following exceptions. These tanks are **NOT** covered by the financial responsibility requirements:

- Farm and residential tanks of 1,100 gallons or less capacity, holding motor fuel used for noncommercial purposes;
- Tanks storing heating oil used on the premises where it is stored;
- Tanks on or above the floor of underground areas, such as basements or tunnels;
- Septic tanks and systems for collecting storm water and wastewater;
- Flow-through process tanks;
- Tanks of 110 gallons or less capacity, and tanks holding de minimis concentration of petroleum; and
- Emergency spill and overfill tanks.

Other storage sites not covered by the federal financial responsibility requirements (such as surface impoundments and field-constructed tanks) are identified as tanks excluded in the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.

## How much financial responsibility coverage is required? When do you need it?

The amount of financial responsibility coverage you need is determined by the type of business you operate, the amount of throughput of your tank, and the number of tanks you have. On the next page you will find a table that displays two groups of UST owners and operators and required coverage amounts.

Basically, your financial responsibility amount falls into two types, **per occurrence** and **annual aggregate**.

The table on page 6 displays coverage amounts for all categories of UST owners and operators.

- **Per Occurrence.** “Per occurrence” mean the amount of money that must be available to pay the costs from one occurrence of a leaking UST. If your tank is used in petroleum production, refining or marketing (such as service stations and truck stops) you must be able to demonstrate that you have \$1 million of per occurrence coverage. The per occurrence amount may be less if your tanks are located at a facility **NOT** engaged in petroleum production, refining or marketing. In this case, if your facility has a monthly throughput of 10,000 gallons or less, you need \$500,000 of per occurrence coverage.
- **Annual aggregate.** You must also have coverage for an annual aggregate amount. The annual aggregate amount is the total amount of financial responsibility that you must have to cover all leaks that might occur in one year. The amount of aggregate coverage that you need depends on the number of tanks that you own or operate: \$1 million annual aggregate for 1-100 tanks; \$2 million annual aggregate for 101 or more tanks.

## Financial Responsibility Requirements

Group of UST Owners And Operators	Per Occurrence Coverage	Aggregate Coverage
Petroleum Marketers	<b>\$1 million</b>	<b>\$1 million</b> If you have 100 or fewer tanks  OR  <b>\$2 million</b> if you have more than 100 tanks
Non-marketers	<b>\$500,000</b> If throughput is 10,000 gallons or less  OR  <b>\$1 million</b>	

### **Multiple Facilities example:**

If you own or operate three service stations with a total of 18 tanks, then you must have financial responsibility in the amount of \$1 million per occurrence and \$1 million annual aggregate. If you own or operate 50 service stations with a total of 200 tanks, you must have financial responsibility in the amount of \$1 million per occurrence and \$2 million annual aggregate.

### **Non-marketer example:**

If you are an automobile dealer with four small tanks with a total monthly throughput of 10,000 gallons, then you would only need to have financial responsibility in the amount of \$500,000 per occurrence and \$1 million annual aggregate. If you have 30 dealerships with a total of 110 tanks you would need to have financial responsibility in the amount of \$500,000 per occurrence, but you would need \$2 million annual aggregate.

## How can you demonstrate financial responsibility?

There are several options for demonstrating financial responsibility (each option is described fully in the **Code of Federal Regulations, 40 CFR Part 280** and **Michigan Underground Storage Tank Rules, Subpart H**):

*You may also use a combination of methods to demonstrate financial responsibility. The methods you choose must cover all costs for which you are responsible (both corrective action and third-party liability) and add up to the amount of coverage you are required to demonstrate.*

- **Obtain insurance coverage.** Insurance may be available from a private insurer or a risk retention group (see page 7).
- **Obtain a guarantee.** You may secure a guarantee for the coverage amount from another firm with whom you have a substantial business relationship. The provider of the guarantee has to pass one of the financial tests described on page 9.
- **Obtain a surety bond.** A surety bond is a guarantee by a surety company that it will meet your financial responsibility obligations.
- **Obtain a letter of credit.** A letter of credit contract involving you, an issuer (usually a bank), and a third party (such as the implementing agency) that obligates the issuer to help you demonstrate your financial responsibility.
- **Pass a financial test.** If your firm has a tangible net worth of at least \$10 million, you can prove your financial responsibility by passing one of the two financial tests described on page 9.
- **Set up a trust fund.** You may set up a fully funded trust fund administered by a third party to demonstrate financial responsibility.

**Local governments have four additional compliance methods tailored to their special characteristics:** a bond rating test, a financial test, a guarantee, and a dedicated fund (all fully described in 40 CFR Part 280) and Michigan Underground Storage Tank Rules (MUSTR).

## What about insurance coverage?

To make sure your insurance policy meets the financial responsibility requirements, have your insurer fill out one of the two following forms.

*If you belong to a trade association, it may be able to provide you with information about insurers and risk retention groups that cover USTs.*

If your UST insurance coverage is an expansion of a policy you already have, your insurer should give you an “Endorsement” document that completes and reproduces the model form shown on page 10. If you get a new policy, your insurer should give you a “Certificate of Insurance” document that completes and reproduces the model form shown on page 11. **Keep the completed form in your records, as explained on page 9.**

You should be aware that insurers may require you to meet certain conditions for coverage. For example, your insurer may require you to test your tank for tightness.

You may also be able to get insurance coverage through a risk retention group. A risk retention group is an insurance company formed by businesses or individuals with similar risks to provide insurance coverage for those risks.

### **What happens if your coverage is canceled?**

Your financial responsibility method must specify that the provider may cancel your coverage only after sending you advance written notice. Insurance, risk retention group, and state fund coverage can be canceled only 60 days after you receive the cancellation notice. Guarantees, surety bonds, and letters of credit can be canceled only 120 days after you receive the cancellation notice. You must find replacement coverage within 60 days after you receive the notice of cancellation. If you cannot get replacement coverage, you must notify your implementing agency.

### **What records must you keep or report to others?**

You must keep at your UST site or your place of business the following records of financial responsibility coverage:

- A current “Certification of Financial Responsibility” (see page I2 for a model of this form that you must complete and reproduce);
- and
- Any additional documentation that shows your financial responsibility method is valid and provides details on the method’s coverage, such as signed copies of official letters, policies, and state fund agreements.

Keep these records until your UST site is properly closed.

Keeping clear records makes good business sense. If asked by STD inspectors or regulatory officials to demonstrate your financial responsibility, you can use these records to demonstrate quickly your compliance with the financial responsibility requirements.

The documentation of financial responsibility should be kept at the facility. You do not need to report financial responsibility records to the federal EPA unless you have been requested to do so.

## Two Financial Tests

### Test 1

- Your firm must have a tangible net worth of at least \$10 million; and
- Your firm must have a tangible net worth of at least 10 times the amount of aggregate coverage that you are required to demonstrate plus any other liability coverage for which your firm is using the test to demonstrate financial responsibility to EPA; and
- Your firm must file the firm's annual financial statements with the Securities and Exchange Commission (SEC), or annually report the firm's tangible net worth to Dun and Bradstreet and receive a rating of 4A or 5A. Utilities may file financial statements with the Energy Information Administration, or the Rural Electrification Administration instead of the SEC; and
- Your firm must have audited financial statements that do not include an adverse auditor's opinion or disclaimer of opinion.

### Test 2

- Your firm must have a tangible net worth of at least \$10 million; and
- Your firm must have a tangible net worth of at least 6 times the amount of aggregate coverage that you are required to demonstrate; and
- Have US assets that are at least 90 percent of total assets or at least 6 times the required aggregate amount; and
- Have net working capital at least 6 times the required aggregate amount, or a bond rating AA, AA, A, or BBB from Standard and Poor's, or Aaa, Aa, A, or Baa from Moody's; and

Your firm must have audited financial statements that do not include an adverse auditor's opinion or disclaimer of opinion.

## Model of "Endorsement"

(Use identical wording; replace bracketed instructions with relevant information.)

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number:

Period of Coverage [current policy period]:

Name of [Insurer or Risk Retention Group]:

Address of [Insurer or Risk Retention Group]:

Name of Insured:

Address of Insured:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tank(s):

[List the number of tanks at each facility and the name(s) and address(es) of the facility (ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental release"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "per occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy provided, however, that any provisions inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsection (a) through (e):

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this endorsement is attached.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the

provider of corrective action or a damaged third party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 40 CFR 280.95-280.102.

c. Whenever requested by [a Director of an Implementing Agency], the ["Insurer" or "Group"] agrees to furnish to [the Director] a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:]

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date of the cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.

I hereby certify that the wording of this instrument is identical to the wording in 40 CFR 280.97(b)(1) and that the ["Insurer" or "Group"] is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

[Signature of authorized representative of Insurer or Risk Retention Group]

[Printed name of person signing]

[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

## Model Of "Certificate of Insurance"

(Use identical wording; replace bracketed instruction with relevant information.)

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number:

Period of Coverage [current policy period]:

Name of [Insurer or Risk Retention Group]:

Address of [Insurer or Risk Retention Group]:

Name of Insured:

Address of Insured:

1. [Name of Insurer or Risk Retention Group], [the "Insurer" or "Group"], as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s):

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "per occurrence" and "annual aggregate" limits of the "Insurer's" or "Group's" liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" or "Group"] further certifies the following with respect to the insurance described in Paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this certificate applies.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 40 CFR 280.95-280.102.

C. Whenever requested by [a Director of an Implementing Agency], the ["Insurer" or "Group"] agrees to furnish to [the Director] a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], except for non-payment of premium or misrepresentation of insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for non-renewal of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:]

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date of cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arises out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting periods are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.

I hereby certify that the wording of this instrument is identical to the wording in 40 CFR 280.97(b)(1) and that the ["Insurer" or "Group"] is "licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states".

[Signature of authorized representative of Insurer or Risk Retention Group]

[Printed name of person signing]

[Title of person signing), Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

## Model of "Certification of Financial Responsibility"

[Owner or operator] hereby certifies that it is in compliance with the requirements of Subpart H of 40 CFR Part 280.

The financial assurance mechanism(s) used to demonstrate financial responsibility under Subpart H of 40 CFR Part 280 is (are) as follows:

[For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage and whether the mechanism covers "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases."]

[Signature of owner operator]

[Printed name of owner or operator]

[Title]

[Date]

[Signature of witness or notary]

[Printed name of witness or notary]

[Date]

The owner or operator must update this certification whenever the financial insurance mechanism(s) used to demonstrate financial responsibility changes